

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EDDIE GAINES,

Petitioner,

v.

ORDER
03-CV-016A

SUPERINTENDENT TIMOTHY J. MURRAY,

Respondent .

The above-referenced case was referred to Magistrate Judge Victor E. Bianchini, pursuant to 28 U.S.C. § 636(b)(1), on November 16, 2006. On October 6, 2008, Magistrate Judge Bianchini filed a Report and Recommendation, recommending that petitioner's petition for a writ of habeas corpus be denied and dismissed and that no certificate of appealability should issue with respect to any of petitioner's claims.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Bianchini's Report and Recommendation, petitioner's petition for a writ of habeas corpus is denied.

The Court finds that petitioner has failed to make a substantial showing of the denial of a constitutional right and therefore denies his motion for a certificate of appealability. 28 U.S.C. § 2253(c)(2).

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any

appeal from this judgment would not be taken in good faith, and therefore denies leave to appeal *in forma pauperis*. Further requests to proceed on appeal *in forma pauperis* must be filed with the United States Court of Appeals for the Second Circuit in accordance with the requirements of Rule 24 of the Federal Rules of Appellate Procedure.

The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: November 7, 2008